

SECOND DIVISION

[G.R. No. 224584, September 04, 2019]

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ZZZ, ACCUSED-APPELLANT.

DECISION

LAZARO-JAVIER, J.:

The Case

This appeal assails the Decision^[1] dated October 30, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 01091-MIN entitled "*People of the Philippines v. ZZZ*" affirming appellant's conviction for one (1) count of rape by sexual intercourse and one (1) count of rape by sexual assault.

Antecedents

The Charges

Appellant ZZZ was separately charged with two (2) counts of rape of his thirteen-year-old daughter AAA in Criminal Case Nos. 2999 and 3000, respectively, viz:

Information^[2] dated December 17, 2007 in Criminal Case No. 2999:

That on or about 1:00 o'clock in the early morning of October 26, 2007 at [REDACTED], [REDACTED] Province of Sultan Kudarat Philippines and within the jurisdiction of this Honorable Court, the said accused, with lewd and unchaste designs and through force and intimidation did then and there, willfully, unlawfully and feloniously succeed in having carnal knowledge of one AAA, his thirteen (13) years old daughter against her will and consent.

CONTRARY TO LAW, particularly Article 266-A, paragraph 1(a) of the Revised Penal Code, in relation to Republic Act 7610.

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Information^[3] dated December 17, 2007 in Criminal Case No. 3000:

That on or about 10:00 o'clock in the evening of November 3, 2007 at [REDACTED] Province of Sultan Kudarat, Philippines and within the jurisdiction of this Honorable Court, the said accused, with lewd and

unchaste designs and through force and intimidation, did then and there, willfully, unlawfully and feloniously succeed in having carnal knowledge of one AAA, his thirteen (13) years old daughter, against her will and consent.

CONTRARY TO LAW, particularly Article 266-A, paragraph 2 of the Revised Penal Code, in relation to Republic Act 7610.

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The cases were consolidated with the Regional Trial Court, Branch 20, Tacurong City. On arraignment, appellant pleaded not guilty to both charges.^[4] Trial on the merits ensued.

Proceedings before the Trial Court

The Prosecution's Evidence

Complainant AAA testified: she was the eldest of the four (4) children of appellant and BBB. She was born on April 29, 1994 as evidenced by her birth certificate. As of October 26, 2007, she was just thirteen (13) years old. She was then studying at [REDACTED], [REDACTED], [REDACTED]. To save on transportation costs and time, she moved in and stayed with her father at the bunk house he rented in the area. Appellant was working as a helper assigned to a ten-wheeler truck owned by a certain Ronnie Dayon.^[5]

On October 25, 2007, about 10 o'clock in the evening, she was sleeping alone in her father's bunk house. A few hours later, she noticed that her mosquito net had been raised and appellant was removing his short pants. After taking off his short pants, he also removed her shorts and panty. He held her hands with one hand and covered her mouth with the other. Using his knee he spread her legs, spat saliva on his palm and wiped it on his penis.^[6]

He inserted his penis into her vagina and mounted her for twenty (20) minutes. She did not shout out of fear. He had placed two (2) knives near her head and threatened to kill her, her siblings, and her mother if she did not submit to him. He dismounted when someone switched on the light at the back of the bunk house. She felt pain in her vagina and there was blood on the blanket. She moved to the sofa near the bed and cried herself to sleep. She woke up at 4 o'clock in the morning of October 26, 2007 and cried again. She kept the incident to herself.^[7]

On November 3, 2007, around 1 o'clock in the morning, she arrived at the bunk house after spending the day with friends watching television. While she was sleeping, she felt appellant remove her blanket, put her head on his arm, and spread her legs with his leg. He inserted his finger into her vagina for five (5) minutes and she felt pain. When she asked him to stop, he heeded and went to sleep.^[8]

On November 5, 2007, her mother visited her. On that day, appellant had gone to

Davao City. Her mother scolded her for not staying in the bunk house during the day and coming home late at night. She then confided to her mother what appellant had done to her. Her mother cried. In the morning of November 7, 2007, she went to see her Uncle CCC, appellant's older brother, in Makilala, Cotabato. She also confided to him about the twin rape incidents with her father. On November 11, 2007, together with her mother and a certain Jane Diaz, she went to the Tacurong City Police Station, where she got investigated. After the cases were filed, appellant sent her a handwritten letter, asking for forgiveness.^[9]

BBB, appellant's wife and complainant's mother, testified: on November 6, 2007, she went to the bunk house to visit her daughter, AAA. The latter confided to her what appellant did to her. When she asked her daughter why she (AAA) did not tell her right away, her daughter said appellant threatened to kill her (BBB), her daughter (herself), and her three (3) other children. On November 9, 2007, she and her brother-in-law MMM reported the incident to the Tacurong City Police Station.^[10]

Dr. Efraim Collado, Assistant City Health Officer confirmed that he examined complainant on November 12, 2007. He found healed lacerations at 3 o'clock and 10 o'clock positions in complainant's vagina. He issued the corresponding medical certificate.^[11]

The Defense's Evidence

Invoking alibi and denial, appellant testified: complainant is his daughter. By 1 o'clock in the morning of October 26, 2007, he was in Davao City. As a helper, he was on board a ten-wheeler truck to deliver sacks of rice to Davao City. On November 3, 2007, he was also on board the same truck to deliver rice bran to William Enterprises in General Santos City. He stayed in General Santos City until the evening of the same day.^[12] He could not have sexually ravished complainant on those dates precisely because he was far away and was not then in the *locus criminis* on those days. Besides, he would not molest complainant because she is his daughter. On cross, he admitted to have sent complainant a handwritten letter.^[13]

The Trial Court's Ruling

As stated, by its Joint Judgment^[14] dated January 14, 2009, the trial court convicted appellant of one (1) count of rape by sexual intercourse (Criminal Case No. 2999) and one (1) count of rape by sexual assault (Criminal Case No. 3000), thus:

WHEREFORE, upon all the foregoing considerations, the court finds the guilt of ZZZ to the crimes of rape by sexual intercourse qualified by the minority of the victim and her relationship with the perpetrator thereof and rape by sexual assault qualified by the just cited circumstances beyond reasonable doubt and hereby sentences him as follows:

In Criminal Case No. 2999

To suffer the penalty of reclusion perpetua and to pay AAA the following:

- a. The amount of P75,000.00 as Civil Indemnity;
- b. The amount of P75,000.00 as Moral Damages; and
- c. The amount of P25,000.00 as Exemplary Damages.

To pay the costs.

For being a detention prisoner, his preventive imprisonment shall be credited in the service of sentence imposed upon him provided that he will abide in writing with the same disciplinary rules imposed upon convicted prisoners, otherwise, with only four-fifths (4/5) thereof.

Pursuant to applicable circulars of the Supreme Court, the accused shall immediately be transferred to the National Bilibid Prisons in Muntinlupa City.

Given in open court this 14th day of January 2009, at Tacurong City, Sultan Kudarat, Philippines.

In Criminal Case No. 3000

To suffer the indeterminate penalty of imprisonment ranging from twelve (12) years of prison mayor, as minimum, to eighteen (18) years of reclusion temporal as maximum and to pay AAA the following:

- a. The amount of P50,000.00 as Civil Indemnity;
- b. The amount of P50,000.00 as Moral Damages; and
- c. The amount of P25,000.00 as Exemplary Damages.

To pay the costs.

For being a detention prisoner, his entire preventive imprisonment shall be credited in the service of sentence imposed on him provided that he shall abide in writing with the same disciplinary rules imposed upon convicted prisoners, otherwise, only four-fifths (4/5) thereof.

IT IS SO ORDERED.^[15]

Proceedings Before the Court of Appeals

On appeal, appellant faulted the trial court for rendering the verdict of conviction. He argued that complainant was an unreliable witness because of the inconsistencies in her testimony pertaining to what time exactly she arrived at the bunk house and the exact time she went to sleep on October 26, 2007 and November 3, 2007, respectively. There was no showing that he employed force, threat, or intimidation when he allegedly sexually ravished complainant on two (2) separate occasions. Also, since complainant herself claimed not to have felt anything when he allegedly inserted his penis into her vagina, the fact of penile penetration became doubtful.^[16]

On the other hand, the Office of the Solicitor General (OSG), through Assistant Solicitor General Anna Esperanza Solomon and Senior State Solicitor Arleen Reyes, submitted that complainant's testimony was corroborated by medical findings that she sustained lacerations in her vagina. The alleged inconsistencies in complainant's testimonies pertaining to the exact time she got home and slept on the dates she was sexually ravished — refer to minor matters and do not detract from her credibility. Lastly, appellant's moral ascendancy or influence, as complainant's father, substituted the element of force, threat, or intimidation.^[17]

The Ruling of the Court of Appeals

By its assailed Decision^[18] dated October 30, 2015, the Court of Appeals affirmed, *viz*:

WHEREFORE, premises considered, the instant appeal is **DENIED**. The January 14, 2009 Joint Judgment of the Regional Trial Court, Branch 20, Tacurong City, in Criminal Cases (sic) No. 2999 and 3000, finding accused-appellant guilty beyond reasonable doubt of violation of Article 266-A, paragraph 1(a) of the Revised Penal Code, in relation to Republic Act 7610 and Article 266-A, paragraph 2 of the Revised Penal Code is hereby **AFFIRMED**.

SO ORDERED.^[19]

The Present Appeal

Appellant now seeks a verdict of acquittal from the Court. Both appellant^[20] and the OSG^[21] manifested that, in lieu of their supplemental briefs, they were adopting their respective briefs in the Court of Appeals.

Issues

- 1) Is appellant guilty of qualified rape by sexual intercourse in Criminal Case No. 2999?
- 2) Is appellant guilty of qualified rape by sexual assault in Criminal Case No. 3000?

Ruling

Criminal Case No. 2999

In Criminal Case No. 2999, complainant testified on how appellant sexually ravished her on October 26, 2007, thus:

PROSECUTOR:

Q: While you were sleeping that evening of October 25, 2007,